THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1323 of 2007

O r d e r:

The petitioner was appointed as a Driver in the respondents-APSRTC in the year 1985. He was issued a charge sheet, dated 27.02.1996, alleging that he unauthorizedly absent from his duties from 17.12.1995 to 27.02.1996. Since the petitioner did not submit any explanation, an enquiry was initiated against him, and the notices sent to the petitioner by the Enquiry Officer were returned unserved with an endorsement "addressee refused". Hence, the Enquiry Officer, having conducted an *ex parte* enquiry, submitted his report holding that the charges are proved against the petitioner. Based on the said enquiry report, a show cause notice was issued calling upon the petitioner to show cause as to why he shall not be removed from service, and the petitioner also has not submitted any explanation. Hence, the petitioner was removed from service by order dated 13.03.1997 of respondent No.1. Assailing the said order of removal, the petitioner preferred appeal and review petition before the appellate and review authorities, which were rejected. Thereupon, he raised an industrial dispute in I.D. No. 105 of 2003, and the Labour Court, by award dated 27.12.2005, directed the respondents-Corporation to reinstate the petitioner into service without back wages and by treating the period of suspension as 'not on duty'. Assailing the award of the Labour Court, in so far as denying back wages

and treating the suspension period as not on duty, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the Labour Court, having come to the conclusion that the petitioner was suffering with heart and kidney disease, and therefore, there was every reason for his not attending the duties during the charged period, and having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate and review authorities, ought to have ordered his reinstatement into service with back wages, and treating the period of suspension as “not on duty”. He thus, prays to set aside the award of the Labour Court, in so far as it denied back wages and treated the suspension period as “not on duty”.

On the other hand, learned Standing Counsel for the respondents-APSRTC submitted that the charges against the petitioner stood proved in the departmental enquiry. The disciplinary authority passed order of removal, which was confirmed by the appellate and review authorities, and though the Labour Court, concurred with the view of the authorities, yet it has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions without backwages, and the same cannot be said to be illegal and arbitrary, warranting interference by this Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to

issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on the ground that he unauthorizedly absented from his duties from 17.12.1995 to 27.02.1996. The charge leveled against the petitioner stood proved in the departmental enquiry. Though the Labour Court concurred with the findings of the disciplinary authority and the appellate and review authorities, it however, felt that non-production of medical certificate immediately after lapse of sanctioned medical leave is an excusable defect, as the petitioner was taking treatment in different hospitals i.e., Osmania, Medvin and Yashoda Hospitals and that point of time, and also underwent Open Heart Surgery and one of his Kidneys was removed. Since the petitioner did not submit medical certificate, it held that having regard to Regulation 11 of the APSRTC Employees (Leave) Regulations, the absence was liable to be treated as unauthorized absence till

medical certificate is accepted. Holding so, the Labour Court felt that the punishment awarded by the disciplinary authority, as confirmed by the appellate and review authorities, is harsh and disproportionate to the misconduct, and accordingly, while setting aside the order of removal, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947 directed reinstatement of the petitioner into service without backwages and subject to certain conditions, which cannot be said to be illegal or arbitrary.

Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages. Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate and review authorities had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate and review authorities, and ordered reinstatement of the petitioner into service on the

ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

In that view of the matter, I find no reason whatsoever to interfere with the impugned award of the Labour Court, which in fact, is a benevolent one.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 2nd February, 2007.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63